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ARIZONA ATTORNEY GENERAL

April 24, 1985

The Honorable John King
State Capitol - House Wing
1700 West Washington
Phoenix, Arizona 85007

Re: I85-054 (R85-020)

Dear Representative King:

You have requested our opinion on whether the amended procedure for allotting precinct committeemen set forth in A.R.S. § 16-821 which became effective January 1, 1985, and which may cause an increase in the allotment in some precincts, is currently operative with the result that new positions, unfilled, would be considered vacant pursuant to A.R.S. § 38-291. For the reasons set forth below, it is our opinion that the new allotment procedures will not be operative to create any positions until the 1986 primary election.

Prior to amendment by Laws 1984, Ch. 104, § 3, A.R.S. § 16-821 provided for the number of county precinct committeemen to be determined, in part, on the number of persons casting their votes in the election for the party's nominee for governor or for presidential electors for the party's nominee for president (one additional precinct committeeman for each 125 votes or major fraction thereof so cast). The amendment changed the measure for determining the number of precinct committeemen from votes cast to registered voters in the party in the precinct as of March 1 of the year in which the general election is held. The amended A.R.S. § 16-821 provides, in pertinent part:

A. At the primary election the members of a political party entitled to representation pursuant to section 16-804 residing in each precinct shall choose one of their numbers as a county precinct committeeman, and the members shall choose one additional precinct committeeman for each one hundred twenty-five voters or major fraction thereof registered in the party in the precinct as reported pursuant to § 16-168, subsection G on March 1 of the year in which the general election is held. . . .

B. The board of supervisors upon recommendation of the county chairman, or the recommendation of a committee designated in the by-laws of the county committee for that purpose, shall determine when a vacancy exists in the office of precinct committeemen. If a vacancy exists, the vacancy shall be filled by the board of supervisors from a list of names submitted by the county chairman of the appropriate political party. . . . The criteria used to establish when a vacancy exists in the office of precinct committeemen shall be as established in section 38-291.

[Emphasis added]

The amendments to the statute became effective on January 1, 1985. The determination of the number of precinct committeemen, based upon the language of the statute cited above depends upon voter registration on March 1 of the year in which a general election is held. The next year in which a general election will be held after January 1, 1985, of course, is 1986. Any additional offices of precinct committeeman, created by the amended A.R.S. § 16-821, will not exist until the next primary election in 1986.

In Ariz. Atty. Gen. Op. 184-200 we said that the amendments pertaining to the selection of precinct committeemen and the size of the state committee, A.R.S. § 16-825, should be followed after their effective date, January 1, 1985. The procedures established by the amendments to A.R.S. § 16-825, we opined, would apply to the electing of state committeemen after

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the effective date, even if the process for selection commenced prior to the effective date of the amendments. The actual selection of the state committeemen would occur after January 1, 1985; therefore, A.R.S. § 16-825 would apply to the state committeemen offices to be filled, which offices could be determined pursuant to the amended A.R.S. § 16-825. With respect to precinct committeemen under amended A.R.S. § 16-821, precinct committeemen offices will not be created until the year of the next general election.

Although A.R.S. § 16-821, as recently amended, provides for the applicability of A.R.S. § 38-291, which statute sets forth the conditions under which a vacancy in an office will be deemed to exist, A.R.S. § 38-291 presupposes the existence of an office to be filled. Because the amended procedures for selecting precinct committeemen do not become operative until 1986, no vacancy exists presently as a result of the amendments to A.R.S. § 16-821 to be filled pursuant to A.R.S. § 38-291. Further, we note, the amended procedures could result in a decrease instead of an increase in the number of committeemen in any given princinct.

Sincerely,



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Attorney General

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